

Union Calendar No. 265

111TH CONGRESS
2^D SESSION

H. R. 3125

[Report No. 111-462]

To require an inventory of radio spectrum bands managed by the National Telecommunications and Information Administration and the Federal Communications Commission.

IN THE HOUSE OF REPRESENTATIVES

JULY 8, 2009

Mr. WAXMAN (for himself, Mr. BOUCHER, Mr. BARTON of Texas, Mr. STEARNS, Mr. DINGELL, Mr. MARKEY of Massachusetts, Mr. DOYLE, Mr. GORDON of Tennessee, Mr. SPACE, Mr. MCNERNEY, Mr. INSLEE, Ms. ESHOO, Ms. MATSUI, Mr. STUPAK, Ms. CASTOR of Florida, Mr. BUYER, Mr. WELCH, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

APRIL 13, 2010

Additional sponsors: Mr. TERRY, Mrs. CHRISTENSEN, Mr. ROGERS of Michigan, Mrs. BONO MACK, Mr. BURGESS, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. SULLIVAN, Mr. VAN HOLLEN, Mr. JOHNSON of Georgia, Mrs. BLACKBURN, and Mr. SCOTT of Georgia

APRIL 13, 2010

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on July 8, 2009]

A BILL

To require an inventory of radio spectrum bands managed by the National Telecommunications and Information Administration and the Federal Communications Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Radio Spectrum Inven-*
5 *tory Act”.*

6 **SEC. 2. SPECTRUM INVENTORY.**

7 *Part B of title I of the National Telecommunications*
8 *and Information Administration Organization Act (47*
9 *U.S.C. 921 et seq.) is amended by adding at the end the*
10 *following:*

11 **“SEC. 119. SPECTRUM INVENTORY.**

12 *“(a) RADIO SPECTRUM INVENTORY.—In order to pro-*
13 *mote the efficient use of the electromagnetic spectrum, the*
14 *NTIA and the Commission shall coordinate and carry out*
15 *each of the following activities not later than 1 year after*
16 *the date of enactment of this section:*

17 *“(1) Except as provided in subsection (e), create*
18 *an inventory of each radio spectrum band of fre-*
19 *quencies listed in the United States Table of Fre-*
20 *quency Allocations, from 225 megahertz to, at a min-*
21 *imum, 3.7 gigahertz, and to 10 gigahertz unless the*
22 *NTIA and the Commission determine that the burden*
23 *of expanding the inventory outweighs the benefit, that*
24 *includes—*

1 “(A) the radio services authorized to operate
2 in each band of frequencies;

3 “(B) the identity of each Federal or non-
4 Federal user within each such radio service au-
5 thorized to operate in each band of frequencies;

6 “(C) the activities, capabilities, functions,
7 or missions (including whether such activities,
8 capabilities, functions, or missions are space-
9 based, air-based, or ground-based) supported by
10 the transmitters, end-user terminals or receivers,
11 or other radio frequency devices authorized to op-
12 erate in each band of frequencies;

13 “(D) the total amount of spectrum, by band
14 of frequencies, assigned or licensed to each Fed-
15 eral or non-Federal user (in percentage terms
16 and in sum) and the geographic areas covered by
17 their respective assignments or licenses;

18 “(E) the approximate number of transmit-
19 ters, end-user terminals or receivers, or other
20 radio frequency devices authorized to operate, as
21 appropriate to characterize the extent of use of
22 each radio service in each band of frequencies;

23 “(F) an approximation of the extent to
24 which each Federal or non-Federal user is using,
25 by geography, each band of frequencies, such as

1 *the amount and percentage of time of use, num-*
2 *ber of end users, or other measures as appro-*
3 *priate to the particular band and radio service;*
4 *and*

5 *“(G) to the greatest extent possible—*

6 *“(i) contour maps or other information*
7 *that illustrate the coverage area, receiver*
8 *performance, and other parameters relevant*
9 *to an assessment of the availability of spec-*
10 *trum in each band;*

11 *“(ii) for each band or range of fre-*
12 *quencies, the identity of each entity offering*
13 *unlicensed services and the types and ap-*
14 *proximate number of unlicensed intentional*
15 *radiators verified or certified by the Com-*
16 *mission that are authorized to operate; and*

17 *“(iii) for non-Federal users, any com-*
18 *mercial names under which facilities-based*
19 *service is offered to the public using the*
20 *spectrum of the non-Federal user, including*
21 *the commercial names under which the*
22 *spectrum is being offered through resale.*

23 *“(2) Except as provided in subsection (e), create*
24 *a centralized portal or Web site to make the inventory*

1 *of the bands of frequencies required under paragraph*
 2 *(1) available to the public.*

3 “(b) *USE OF AGENCY RESOURCES.*—*In creating the*
 4 *inventory described in subsection (a)(1), the NTIA and the*
 5 *Commission shall first use agency resources, including ex-*
 6 *isting databases, field testing, and recordkeeping systems,*
 7 *and only request information from Federal and non-Fed-*
 8 *eral users if such information cannot be obtained using such*
 9 *agency resources.*

10 “(c) *REPORTS.*—

11 “(1) *IN GENERAL.*—*Except as provided in sub-*
 12 *section (e), not later than 2 years after the date of en-*
 13 *actment of this section and biennially thereafter, the*
 14 *NTIA and the Commission shall submit a report to*
 15 *the Committee on Commerce, Science, and Transpor-*
 16 *tation of the Senate and to the Committee on Energy*
 17 *and Commerce of the House of Representatives con-*
 18 *taining—*

19 “(A) *the results of the inventory created*
 20 *under subsection (a)(1), including any update to*
 21 *the information in the inventory pursuant to*
 22 *subsection (d);*

23 “(B) *a description of any information the*
 24 *NTIA or the Commission determines is necessary*
 25 *for such inventory but that is unavailable; and*

1 “(C) a description of any information not
2 provided by any Federal or non-Federal user in
3 accordance with subsections (e)(1)(B)(ii) and
4 (e)(2)(C)(ii).

5 “(2) *RELOCATION REPORT*.—

6 “(A) *IN GENERAL*.—Except as provided in
7 subsection (e), the NTIA and the Commission
8 shall submit a report to the Committee on Com-
9 merce, Science, and Transportation of the Senate
10 and the Committee on Energy and Commerce of
11 the House of Representatives containing a rec-
12 ommendation of which spectrum, if any, should
13 be reallocated or otherwise made available for
14 shared access and an explanation of the basis for
15 that recommendation.

16 “(B) *DEADLINES*.—The report required
17 under subparagraph (A) shall be submitted not
18 later than 4 years after the date of enactment of
19 this section and every 4 years thereafter.

20 “(3) *INVENTORY REPORT*.—If the NTIA and the
21 Commission have not conducted an inventory under
22 subsection (a) to 10 gigahertz at least 90 days before
23 the third report required under paragraph (1) is sub-
24 mitted, the NTIA and the Commission shall include an
25 evaluation in such report and in every report there-

1 *after of whether the burden of expanding the inven-*
 2 *tory to 10 gigahertz outweighs the benefit until such*
 3 *time as the NTIA and the Commission have con-*
 4 *ducted the inventory to 10 gigahertz.*

5 “(d) *MAINTENANCE AND UPDATING OF INFORMA-*
 6 *TION.—After the creation of the inventory required by sub-*
 7 *section (a)(1), the NTIA and the Commission shall make*
 8 *all reasonable efforts to maintain and update the informa-*
 9 *tion required under such subsection on a quarterly basis,*
 10 *including when there is a transfer or auction of a license*
 11 *or a change in a permanent assignment or license.*

12 “(e) *NATIONAL SECURITY AND PUBLIC SAFETY INFOR-*
 13 *MATION.—*

14 “(1) *NONDISCLOSURE.—*

15 “(A) *IN GENERAL.—If the head of an execu-*
 16 *tive agency of the Federal Government deter-*
 17 *mines that public disclosure of certain informa-*
 18 *tion held by that agency or a licensee of non-*
 19 *Federal spectrum and required by subsection (a),*
 20 *(c), or (d) would reveal classified national secu-*
 21 *rity information or other information for which*
 22 *there is a legal basis for nondisclosure and such*
 23 *public disclosure would be detrimental to na-*
 24 *tional security, homeland security, or public*
 25 *safety, the agency head shall notify the NTIA of*

1 *that determination and shall include descrip-*
2 *tions of the activities, capabilities, functions, or*
3 *missions (including whether they are space-*
4 *based, air-based, or ground-based) supported by*
5 *the information being withheld.*

6 *“(B) INFORMATION PROVIDED.—The agency*
7 *head shall provide to NTIA—*

8 *“(i) the publicly releasable information*
9 *required by subsection (a)(1);*

10 *“(ii) to the maximum extent prac-*
11 *ticable, a summary description, suitable for*
12 *public release, of the classified national se-*
13 *curity information or other information for*
14 *which there is a legal basis for nondisclo-*
15 *sure; and*

16 *“(iii) a classified annex, under appro-*
17 *priate cover, containing the classified na-*
18 *tional security information or other infor-*
19 *mation for which there is a legal basis for*
20 *nondisclosure that the agency head has de-*
21 *termined must be withheld from public dis-*
22 *closure.*

23 *“(2) PUBLIC SAFETY NONDISCLOSURE.—*

24 *“(A) IN GENERAL.—If a licensee of non-*
25 *Federal spectrum determines that public disclo-*

1 *sure of certain information held by that licensee*
2 *and required to be submitted by subsection (a),*
3 *(c), or (d) would reveal information for which*
4 *public disclosure would be detrimental to public*
5 *safety, or the licensee is otherwise prohibited by*
6 *law from disclosing the information, the licensee*
7 *may petition the Commission for a partial or*
8 *total exemption from inclusion on the centralized*
9 *portal or Web site under subsection (a)(2) and in*
10 *the report required by subsection (c).*

11 *“(B) BURDEN.—The licensee seeking an ex-*
12 *emption under this paragraph bears the burden*
13 *of justifying the exemption and shall provide*
14 *clear and convincing evidence to support such an*
15 *exemption.*

16 *“(C) INFORMATION REQUIRED.—If an ex-*
17 *emption is granted under this paragraph, the li-*
18 *cencee shall provide to the Commission—*

19 *“(i) the publicly releasable information*
20 *required by subsection (a)(1) for the inven-*
21 *tory;*

22 *“(ii) to the maximum extent prac-*
23 *ticable, a summary description, suitable for*
24 *public release, of the information for which*
25 *public disclosure would be detrimental to*

1 *public safety or the licensee is otherwise*
2 *prohibited by law from disclosing; and*

3 “(iii) *an annex, under appropriate*
4 *cover, containing the information that the*
5 *Commission has determined should be with-*
6 *held from public disclosure.*

7 “(3) *ADDITIONAL DISCLOSURE.—The annexes re-*
8 *quired under paragraphs (1)(B)(iii) and (2)(C)(iii)*
9 *shall be provided to the congressional committees list-*
10 *ed in subsection (c), but shall not be disclosed to the*
11 *public under subsection (a) or subsection (d) or pro-*
12 *vided to any unauthorized person through any other*
13 *means.*

14 “(4) *NATIONAL SECURITY COUNCIL CONSULTA-*
15 *TION.—Prior to the release of the inventory under*
16 *subsection (a), any updates to the inventory resulting*
17 *from subsection (d), or the submission of a report*
18 *under subsection (c)(1), the NTIA and the Commis-*
19 *sion shall consult with the National Security Council*
20 *for a period not to exceed 30 days for the purposes*
21 *of determining what additional information, if any,*
22 *shall be withheld from the public.*

23 “(f) *PROPRIETARY INFORMATION.—In creating and*
24 *maintaining the inventory, centralized portal or Web site,*
25 *and reports under this section, the NTIA and the Commis-*

1 *sion shall follow their rules and practice regarding con-*
2 *fidential and proprietary information. Nothing in this sub-*
3 *section shall be construed to compel the Commission to make*
4 *publicly available any confidential or proprietary informa-*
5 *tion.”.*

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